

STATE OF MICHIGAN
COURT OF APPEALS

ARCHIE DELAURIER, and MARGARET M.
DELAURIER,

UNPUBLISHED
February 10, 2005

Plaintiffs-Appellees,

v

DAVID W. DELAURIER, Sr.,

No. 250938
Roscommon Circuit Court
LC No. 02-723630-CH

Defendant-Appellant.

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Plaintiffs brought this action under MCR 3.411 and MCL 600.2932 to set aside a quitclaim deed that conveyed to defendant, plaintiffs' adult son, a joint tenancy with themselves to a five-acre parcel owned by plaintiffs, with full rights of survivorship. Following a bench trial, the trial court declared the deed null and void and set it aside. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E)(1).

Defendant argues that the trial court erred by failing to direct a verdict in his favor at the close of plaintiffs' case. We disagree. In reviewing a trial court's decision on a motion for directed verdict, "[t]he appellate court is to review the evidence and all legitimate inferences in the light most favorable to the nonmoving party" to determine whether a question of fact exists. *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000).

A conveyance of real property may be set aside if the challenger shows that it was obtained through fraud, mistake of fact, coercion, or undue influence. *Mannausa v Mannausa*, 370 Mich 180, 184-185; 121 NW2d 423 (1963); see also *Connor v Harris*, 258 Mich 670, 671-676; 242 NW 804 (1932), and *Ferd L Alpert Industries, Inc v Oakland Metal Stamping Co*, 3 Mich App 101, 109; 141 NW2d 671 (1966), rev'd on other grounds 379 Mich 272 (1967).

"To establish undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will." *In re Karmey Estate*, 468 Mich 68, 75; 658 NW2d 796 (2003), quoting *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976). "Fraud and undue influence are seldom capable of direct proof"

and must, instead, be inferred from the facts and circumstances of the case. *Connor, supra* at 677. “Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, are not sufficient” to show undue influence. *In re Karmey Estate, supra* at 75, quoting *Kar, supra* at 537.

Defendant correctly observes that lack of consideration or benefit is not itself sufficient to set aside a conveyance because “a parent may convey property to a child without any consideration.” *Mannausa, supra* at 185. Further, “[w]hile a contract signed under belief that it is of a different nature may be voided, . . . ignorance of the contents of the instrument is no excuse.” *Ferd Alpert Industries, supra* at 110.

But unlike *Ferd Alpert Industries*, this case did not involve an arm’s-length commercial transaction. Viewed in a light most favorable to plaintiffs, the evidence showed that defendant had the quitclaim deed prepared by his own attorney without discussing it with plaintiffs, that defendant did not explain the document to plaintiffs, and that plaintiffs were unaware that the document defendant asked them to sign was a deed conveying an interest in their property to defendant. The evidence also supported an inference that defendant’s father had vision problems that affected his ability to read the document, and that plaintiffs signed the document without reviewing it because they trusted defendant, their son, and believed it was yet another legal document, possibly connected to defendant’s custody and child support dispute, that defendant needed them to sign. In short, the evidence supported an inference that defendant exploited his relationship with plaintiffs and tricked them into signing the deed by misrepresenting the nature of the document. Viewed most favorably to plaintiffs, the evidence was sufficient to enable a rational trier of fact to find undue influence, despite plaintiffs’ failure to read the deed. Therefore, defendant’s motion for a directed verdict was properly denied.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen